



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 15, 1996

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR96-1135

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100060.

The Harris County District Attorney (the "district attorney") received a request for certain items from the district attorney's file in the case styled *State v. Errol LaGard*. You state that the district attorney will release items previously filed with the clerk of the criminal trial court. You also state that there are no documents within the file that constitute statements or affidavits authored by Mr. LaGard. You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code. You have submitted samples of the responsive documents.¹ We have considered the exceptions you claimed and have reviewed the sample documents.

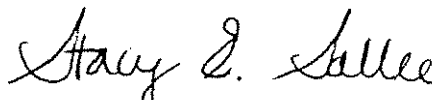
A governmental body is not required to take affirmative steps to create or obtain information that is not in its possession. Open Records Decision No. 534 (1989). Therefore, the district attorney need not respond to the request for statements or affidavits authored by Mr. LaGard.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.² *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). We conclude that, except for front page offense report information, section 552.108 of the Government Code excepts the requested records from required public disclosure.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 100060

Enclosures: Submitted documents

cc: Mr. B. J. Walter, Jr.
Friedman & Gold, A P.C.
Five Post Oak Park, Suite 1800
Houston, Texas 77027
(w/o enclosures)

²The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

³The requestor argues that section 552.108 should not apply to information that was previously released to defendant's counsel in connection with the trial. However, as this office noted in Open Records Decision No. 579 (1990), exchanging information among litigants in informal discovery is not a "voluntary" release of information for purposes of section 552.007 of the Government Code.